



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART II

PROMOTION OF CHILDREN'S WELFARE BY LOCAL  
AUTHORITIES AND BY CHILDREN'S HEARINGS ETC.

### CHAPTER I

SUPPORT FOR CHILDREN AND THEIR FAMILIES

#### *Introductory*

#### **16 Welfare of child and consideration of his views**

- (1) Where under or by virtue of this Part of this Act, a children's hearing decide, or a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be their or its paramount consideration.
- (2) In the circumstances mentioned in subsection (4) below, a children's hearing or as the case may be the sheriff, taking account of the age and maturity of the child concerned, shall so far as practicable—
  - (a) give him an opportunity to indicate whether he wishes to express his views;
  - (b) if he does so wish, give him an opportunity to express them; and
  - (c) have regard to such views as he may express;and without prejudice to the generality of this subsection a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view.
- (3) In the circumstances mentioned in subsection (4)(a)(i) or (ii) or (b) of this section, no requirement or order so mentioned shall be made with respect to the child concerned unless the children's hearing consider, or as the case may be the sheriff considers, that it would be better for the child that the requirement or order be made than that none should be made at all.

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*Status: This is the original version (as it was originally enacted).*

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- (4) The circumstances to which subsection (2) above refers are that—
- (a) the children’s hearing—
    - (i) are considering whether to make, or are reviewing, a supervision requirement;
    - (ii) are considering whether to grant a warrant under subsection (1) of section 66, or subsection (4) or (7) of section 69, of this Act or to provide under subsection (4) of the said section 66 for the continuation of a warrant;
    - (iii) are engaged in providing advice under section 60(10) of this Act; or
    - (iv) are drawing up a report under section 73(13) of this Act;
  - (b) the sheriff is considering—
    - (i) whether to make, vary or discharge a parental responsibilities order, a child assessment order or an exclusion order;
    - (ii) whether to vary or discharge a child protection order; (iia) whether to grant a warrant under section 66 of this Act; or
    - (iii) on appeal, whether to make such substitution as is mentioned in section 51(5)(c)(iii) of this Act; or
  - (c) the sheriff is otherwise disposing of an appeal against a decision of a children’s hearing.
- (5) If, for the purpose of protecting members of the public from serious harm (whether or not physical harm)—
- (a) a children’s hearing consider it necessary to make a decision under or by virtue of this Part of this Act which (but for this paragraph) would not be consistent with their affording paramountcy to the consideration mentioned in subsection (1) above, they may make that decision; or
  - (b) a court considers it necessary to make a determination under or by virtue of Chapters 1 to 3 of this Part of this Act which (but for this paragraph) would not be consistent with its affording such paramountcy, it may make that determination.